Calendar No. 935

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-647

COMPUTER EQUIPMENT CONTRIBUTION ACT OF 1982

OCTOBER 1 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. DOLE, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 5573]

The Committee on Finance, to which was referred the bill (H.R. 5573) to amend the Internal Revenue Code of 1954 to encourage contributions of computer equipment to elementary and secondary schools, having considered the bill, reports favorably thereon with amendments to the text, and an amendment to the title, and recommends that the bill as amended do pass.

The amendments are shown in the text of the bill in italic.

I. SUMMARY

A. Charitable Contributions of Computer Equipment to Qualified Organizations

Present law

Under present law, a donor of appreciated ordinary-income property (property the sale of which would not give rise to long-term capital gain) generally may deduct only the amount of the donor's basis in the property, rather than the fair market value (Code sec. 170(e)). For example, a manufacturer which donates a product from its inventory generally may deduct only its cost for the item.

Explanation of provisions

The bill, as amended by the committee, provides a special deduction rule for certain corporate charitable contributions of newly manufactured computer equipment to elementary or secondary schools for use at the school, or to museums or libraries for use at the museum or library, directly in the education of elementary or secondary schoolchildren. For any one computer company, only contributions made during a single taxable year beginning in 1983, in 1984, or in 1985 are eligible for the special rule.

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Under the amended bill, the maximum deduction allowed for charitable contributions of qualifying computer equipment (as defined in the bill) will equal the taxpayer's basis in the donated item plus one-half of the difference between fair market value at the time of the contribution and basis, but not to exceed 150 percent of the taxpayer's basis.

To qualify for the special deduction rule, the contribution must be made pursuant to a written plan of the donor corporation under which there will not be undue concentrations of the donor's contributions of computer equipment from either a geographic standpoint or from the standpoint of the relative economic status of the students of the donees which receive contributions from the donor. Among other requirements, the contribution must be made within six months after substantial completion of construction of the donated equipment.

B. Bad Debt Deductions of Commercial Banks

The bill provides that the applicable percentage for the percentage of outstanding loans method of computing the bad debt deduction of commercial banks is 1.0 percent. The 1.0-percent rate will remain effective so long as the provisions requiring withholding on dividends and interest remain in effect. The provision is effective for taxable years beginning after 1982.

The House-passed bill (H.R. 5573) did not contain this provision.

II. EXPLANATION OF THE BILL

A. Charitable Contributions of Computer Equipment to Qualified Organization (sec. 102 of the bill and sec. 170(e) of the Code)

Present Law

General reduction rule

The amount of a charitable deduction otherwise allowable for donated property generally must be reduced by the amount of any ordinary income which the donor would have realized had the property been sold for its fair market value at the date of the contribution (Code sec. 170(e)). Thus, a donor of appreciated ordinary-income property (property the sale of which would not give rise to long-term capital gain) generally may deduct only the donor's basis in the property, rather than the fair market value. For example, a manufacturer which donates a product from its inventory generally may deduct only its cost for the item.

Special rule for certain corporate contributions

A different rule applies to charitable contributions by corporations of two types of ordinary-income property if donated to certain exempt organizations for specified purposes. The special rule applies to corporate donations of ordinary-income property to a charitable organization to be used solely for care of the needy, the ill, or infants (such as donations by the producer or manufacturer of food, clothing, or medical equipment), where such use is related to the donee's charitable functions (sec. 170(e)(3)). Also, the special rule applies to corporate donations of newly manufactured scientific equipment to a college or university to be used for research (or research training) in the United States in the physical or biological sciences (sec. 170(e)(4)).

In these cases, the corporate donor is allowed a deduction equal to the sum of its basis in the property plus one-half of the unrealized appreciation (i.e., the difference between fair market value and basis), but not in excess of twice the basis.

Reasons for Change

The committee believes that an additional incentive is desirable to encourage manufacturers to contribute computers, on a charitable basis, to schools, libraries, and museums for use at the donee institution directly in the education of elementary and secondary schoolchildren, so that young students will become trained in today's technology. Skill in using computers has become important as more and more jobs require computer literacy.

The desirability of making available computers to schoolchildren makes it appropriate to provide, for a limited time, a greater tax

incentive than in present law for charitable contributions of computers, manufactured by the donor corporation no more than six months before contribution, which the donee uses directly in the education of schoolchildren. However, the committee does not intend that the increased deduction will be available for transfer of computer equipment which are not charitable in nature, such as if intended to enlarge the market for the transferor's products or services.

Explanation of Provisions

Overview

The bill, as amended by the committee, provides a special deduction rule for certain corporate charitable contributions of newly manufactured computer equipment to elementary or secondary schools for use at the school, or to museums or libraries for use at the museum or library, directly in the education of elementary or secondary schoolchildren. For any one computer company, only contributions made during a single taxable year beginning in 1983, in 1984, or in 1985 are eligible for the special rule.

Requirements for favorable treatment

In order for the special deduction rule to apply, there must be a charitable contribution by a corporation [1] of tangible personal property which satisfies all of the following requirements.

1. Qualifying computer equipment

The donated property must be tangible personal property which is inventory (within the meaning of sec. 1221(1)) and must be computer equipment as defined in the bill. Also, the donated computer equipment must be assembled by the taxpayer, and the taxpayer must be regularly engaged in the business of assembling and selling equipment of the same kind as the donated property.

The bill defines computer equipment qualifying for the special deduction rule to mean—

(1) a data processor [2] which can be programmed in at least three standard computer languages, which has a random access memory with a capacity for at least 32,000 bytes (determined by reference to the donated computer equipment, without regard to additional random access memory capacity which could be achieved through use of additional equipment which is not donated), and which is (or can be) connected with a screen for visual display of the data;

(2) a display screen, a printer, or a disc drive, but only if such equipment is donated by the taxpayer for use in connection with such a data processor donated by the taxpayer; and

(3) any installation equipment for equipment, donated by the taxpayer, which is described in (1) or (2). The term installation equipment is limited to cables and display screen, printer, or cassette recorder "hook up" equipment such as modulators, interface boards, or interface cards.

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[1] The special deduction rule does not apply in the case of a corporation which is a subchapter S corporation, as defined in sec. 1371(b); a personal holding company, as defined in sec. 542; or a service organization, as defined in sec. 414(m)(3).

[2] For purposes of this definition, the term data processor also means a keyboard (or similar input equipment) donated as part of a data processor as defined in the bill.

Intangible computer property and tangible property which is not expressly listed in the bill's definition of computer equipment does not qualify for the special deduction rules under the bill.

2. Eligible donees

The computer equipment must be donated to a qualified organization, defined by the bill to mean—

(1) an educational organization (within the meaning of sec. 170(b)(1)(A)(ii))[3];

(2) an elementary or secondary school operated as an activity of at tax-exempt section 501(c)(3) organization (such as a church), provided that such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on; or

(3) a museum or library which is described in section 501(c)(3) and tax-exempt under section 501(a), which is operated by a governmental unit referred to in section 170(c)(1), or which is operated as an activity of an organization described in section 501(c)(3) and tax-exempt under section 501(a).

Also, the donee must be located in the United States.

3. Governing body

The contribution of computer equipment to an eligible donee must be made through the donee's governing body.

For example, where State law provides that a local school board or school district has the authority to accept and administer charitable gifts for public schools under the jurisdiction of the board or district, the contribution must be made through such governing body. In the case of a private school, the contribution must be made through the school's board of trustees or other governing body.

4. Time of contribution

The contribution must be made within six months after substantial completion of construction of the computer equipment. For any one donor corporation, only contributions made during a single taxable year of the corporation beginning after December 31, 1982, and before January 1, 1986, with respect to which the corporation elects to have the provisions of section 102 of the bill apply, are eligible for the special rule in the bill. The election is to be made at such time and in such manner as the Treasury Department prescribes by regulations.[4]

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[3] An educational organization is described in sec. 170(b)(1)(A)(ii) "if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools * * *" and includes both public and private schools (Reg. § 1.170A-9(b)(1)). Under the bill, a State-run public vocational or technical education school (if it qualifies as an educational organization within the meaning of sec. 170(b)(1)(A)(ii)) is an eligible donee if the school admits students who have not either graduated from high school or earned a high school equivalency certificate.

[4] In the case of a controlled group of corporations (within the meaning of sec. 1563(a)), the applicable taxable year shall be the same for all members of the controlled group. Also, for purposes of the applicable taxable year rule, a corporation and another corporation which succeeds to a substantial portion of the assets of such corporation are treated as one taxpayer.

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5. Limitation to new equipment

The original use of the donated computer equipment must be by the donee.

6. Schoolchild education use requirement

Substantially all (at least 80 percent) of the use of the donated computer equipment by the donee must be at the location of the donee and must be directly in the education of elementary and secondary schoolchildren.

7. Prohibition on donee sale

The donated computer equipment may not be transferred by the donee in exchange for money, other property, or services.

8. Written confirmation

The donor corporation must receive a written statement from the donee representing that the use and disposition of the donated computer equipment will be in accordance with the preceding two requirements.

9. Distributional requirements

All contributions by any one donor corporation must be made pursuant to a written plan of the donor under which there will not be undue concentrations of the donor's contributions of computer equipment from either a geographic standpoint or from the standpoint of the relative economic status of the students of the donees which receive contributions from the donor. These distributional requirements are intended to insure a widespread distribution of donated property which will benefit a wide cross-section of elementary and secondary schoolchildren.

A determination of whether a donor's contribution plan meets these distributional requirements is to be made on an overall basis, taking into account all the donees which receive contributions from the donor under the plan (not just certain of such donees). If, under a plan, contributions are made through one or more governing bodies which have authority to allocate contributed equipment to particular schools under the body's jurisdiction (e.g., as where a school district allocates donated computer equipment only to its high schools), then a determination of whether the plan meets the distributional requirement as to a relative economic status of students is to be made by taking into account the relative economic status of students of all schools within the jurisdiction of the governing body.

The committee intends that under the distributional requirements of the bill, not more than 15 percent of all contributions from any one donor corporation may be made to donees located in any one State; that no more than one-third of such contributions may be made to donees where the median family income of schoolchildren significantly exceeds the national average; and that at least one-third of such contributions must be made to donees where the median family income of schoolchildren is significantly below the national average. The Treasury Department may, however, vary these percentage rules in appropriate cases, based on the facts and circumstances of such cases.

Charitable contribution required

Court cases have held that if a transfer to a charitable organization results in a benefit to the donor, no charitable deduction is allowed. For example, the U.S. Court of Claims has upheld denial of charitable deductions claimed by a manufacturer for discounts on purchase of sewing machines by schools, where the court had found that the discounts were offered for the predominant purpose of enlarging the market for the manufacturer's brand of sewing machines (*Singer Co.* v *U.S.*, 449 F.2d 413 (Ct. Cl. 1971). The committee does not intend that the adoption of section 102 of this bill be interpreted as classifying computer equipment contributions as charitable contributions without regard to the donor-benefit rules expressed in the *Singer* case. Instead, the committee intends that a determination of whether a particular contribution of computer equipment qualifies as a charitable contribution is to be made on the basis of the general rules for defining charitable contributions under present law, as also apply to contributions of other types of property. The committee intends also that, to qualify under the bill, the contribution must be made out of disinterested generosity and must be intended for charitable purposes, as contrasted to promotional or other business purposes.

Allowable deduction

If all the requirements of the bill are satisfied, the charitable deduction allowed by the bill for a charitable contribution of qualifying computer equipment generally is for the sum of (1) the taxpayer's basis in the property plus (2) one-half of the unrealized appreciation (i.e., one-half of the difference between the property's fair market value [5] determined at the time of the contribution and the donor's basis in the property). However, in no event is a deduction allowed for any amount in excess of 150 percent of the donor's basis in the property.

Effective Date

The provisions of section 102 of the bill will apply to taxable years beginning after 1982.

Revenue Effect

The provisions of section 102 of the bill are estimated to reduce fiscal year budget receipts by $14 million in 1983, $23 million in 1984, $17 million in 1985, $8 million in 1986, and a negligible amount thereafter.

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[5] Where donated property is a type which the taxpayer sells in the course of its business, the fair market value is the price which the taxpayer would have received if the taxpayer had sold the contributed property in the usual market in which it customarily sells, at the time and place of the contribution, and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom it customarily sells; but if it sells only at retail, the usual market consists of its retail customers (Reg. § 170A–1(c)(2)).

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B. Bad Debt Deductions of Commercial Banks (sec. 201 of the bill and sec. 585 of the Code)

Present Law

Commercial banks compute their bad debt deductions under either the experience method or the percentage of outstanding loans method (Code sec. 585). Under the Tax Reform Act of 1969, the percentage of outstanding loans method is phased out over an 18-year period. Under the phase-out schedule established under the 1969 Act, bad debt deductions generally are permitted to the extent necessary to increase the bad debt reserve to the following percentages of eligible outstanding loans: 1969 to 1975, 1.8 percent; 1976–1981, 1.2 percent; and 1982–1987, 0.6 percent. After 1987, the bad debt deduction of commercial banks is to be computed under the experience method.

Section 267 of the Economic Recovery Tax Act of 1981 (ERTA) provided that the applicable percentage under the percentage of outstanding loans method of computing bad debt deductions of commercial banks is 1.0 percent for taxable years beginning in 1982, instead of the 0.6 percent provided by the Tax Reform Act of 1969. For years after 1982 and before 1988, the applicable percentage will be 0.6 percent.

Reasons for Change

Because of the downturn in recent economic conditions, commercial banks may experience significantly more bad debts than the bad debt reserves computed under the experience method would provide. Consequently, the committee believes that it would be inappropriate at this time to continue the phaseout of the percentage of outstanding loans method of computing bad debt reserves for commercial banks. In addition, the committee recognizes that compliance with the withholding rules of the Tax Equity and Fiscal Responsibility Act of 1982 involves some costs for commercial banks. Under these circumstances, the committee concluded that the applicable percentage under the percentage of outstanding loans method should continue at 1.0 percent so long as the provisions requiring withholding on interest (enacted in subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982) are in effect.

Explanation of Provisions

The bill provides that the applicable percentage under the percentage of outstanding loans method of computing bad debt deductions of commercial banks shall be 1.0 percent.[1] The 1.0 percent rate is to be effective for each taxable year that the provisions of the Tax Equity

[1] The deduction computed under sec. 585 as amended by the bill (i.e., with the applicable percentage being 1.0 percent) is subject to the reductions provided by Code section 291 as added by the Tax Equity and Fiscal Responsibility Act of 1982.

and Fiscal Responsibility Act requiring withholding on interest and dividends are in effect and not significantly narrowed as of the end of that taxable year.[2] The base year will continue to be the last taxable year beginning before 1976.

Effective Date

The provisions of section 201 of the bill will be effective for taxable years beginning after 1982.

Revenue Effect

The provisions of section 201 of the bill are estimated to reduce fiscal year budget receipts as follows: $20 million in 1983, $53 million in 1984, $71 million in 1985, $78 million in 1986, and $84 million in 1987.

[2] If the provisions requiring withholding on interest and dividends are repealed or significantly narrowed, the applicable percentage will revert to the phaseout of the percentage of outstanding loans method as provided by present law.

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III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget Effects

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of H.R. 5573, as reported.

Budget receipts

The table below summarizes the estimates of the effects on budget receipts of the provisions of the bill for fiscal years 1983–1987:

[Fiscal years; millions of dollars]

Provision	1983	1984	1985	1986	1987
1. Charitable contributions of computer equipment	−14	−23	−17	−8	(1)
2. Bad debt deductions of commercial banks	−20	−53	−71	−78	−84
Total	+34	−76	−88	−86	−84

[1] Negligible revenue loss.

The Treasury Department agrees with this statement.

Budget outlays

The bill involves no budget outlays.

Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 5573, as amended, was ordered favorably reported by voice vote.

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IV. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of H.R. 5573, as reported.

Numbers of individuals and businesses who would be regulated

The bill does not involve new or expanded regulation of individuals or businesses.

Economic impact of regulation on individuals, consumers, and business

Section 102 of the bill provides a special deduction rule for certain corporate charitable contributions of newly manufactured computer equipment to schools for use at the school, or to museums or libraries for use at the museum or library, directly in the education of elementary or secondary schoolchildren. Section 201 of the bill provides, in certain circumstances, that the applicable percentage under the percentage of outstanding loans method of computing bad debt deductions of commercial banks shall be 1.0 percent for taxable years beginning after 1982, rather than 0.6 percent as applicable under present law.

Impact on personal privacy

The bill does not relate to the personal privacy of individuals.

Determination of the amount of paperwork

The bill will involve little additional paperwork for taxpayers. To be eligible, for the special deduction rule in section 102 of the bill, qualifying contributions of computer equipment must be made pursuant to a written plan of the donor corporation meeting the distributional requirements of the bill.

Other Matters

Consultation with Congressional Budget Office on budget estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates of the tax provisions of the bill (as shown in Section III of this report) and agrees with the methodology used and the committee's budget estimates.

New budget authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by the bill involve no budget authority.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by sections 102 and 201 of the bill involve increased tax expenditures. A statement as to the estimated effect on budget receipts of the provisions of the bill is set forth in section III of this report.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the provisions of H.R. 5573, as reported by the committee).

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Calendar No. 936

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-648

RATE OF CERTAIN TAXES PAID TO VIRGIN ISLANDS

OCTOBER 1 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. DOLE, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7093]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill as amended do pass.

The amendment to the text is shown in italic in the reported bill.

I. SUMMARY

Virgin Islands Taxes

The Treasury and the Government of the Virgin Islands take the position that present law imposes a 30-percent tax on the non-Virgin Islands recipient of certain Virgin Islands source passive investment income, and that present law also imposes withholding at the source by the V.I. payor of such income. The bill will reduce this tax to 10 percent when the recipient is a U.S. citizen, resident alien, or corporation and imposes a corresponding withholding obligation on the V.I. payor of such income. The bill will allow the V.I. Government further to reduce this 10-percent rate in its discretion. The bill will not affect payments of V.I. source passive income to non-U.S. persons.

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Social Security Disability Insurance (DI)

In addition, the bill will make several changes in the social security disability insurance program relating to the continuing disability investigation (CDI) process. The bill will continue DI benefits and Medicare coverage, for certain terminated beneficiaries pursuing an appeal, through the Administrative Law Judge (ALJ) hearing; allow the Secretary to slow the CDI process; requires the Secretary to obtain medical evidence available for the 12-month period preceding the CDI review; and require the Secretary to report semiannually on various aspects of the CDI process.

II. EXPLANATION OF THE BILL

A. Rate of Certain Taxes Paid to Virgin Islands (sec. 1 of the bill and new secs. 934A and 1444 of the Code)

Present Law

Virgin Islands taxation in general

Under the Revised Organic Act of 1954, the U.S. Internal Revenue Code is generally applied in the Virgin Islands as the local territorial tax law, except that tax proceeds are paid into the treasury of the Virgin Islands. This system has been interpreted to require that, in applying the Internal Revenue Code in the Virgin Islands, the name "Virgin Islands" is substituted, where appropriate, for the name "United States" where it appears in the U.S. Code (the so-called "mirror image" system).

Corporate and individual "inhabitants" of the Virgin Islands are taxed on their worldwide income by the Virgin Islands and, by paying such tax to the Virgin Islands, are relieved of any income tax liability to the Federal Treasury, even on their U.S.-source income. All corporations chartered in the Virgin Islands are considered to be inhabitants of the Virgin Islands. In certain circumstances, a United States corporation may also qualify as an inhabitant of the Virgin Islands.

The U.S. Internal Revenue Code limits the power of the Virgin Islands government to reduce its income tax (sec. 934). The Virgin Islands may not reduce its taxes attributable to income derived from sources within the United States. With respect to non-U.S. source income, the Virgin Islands may not reduce its corporate tax except to U.S. and V.I. corporations that meet a so-called "80–50 test." This test allows the Virgin Islands to reduce taxes only for those U.S. and V.I. corporations that have derived for the past three taxable years (or applicable part thereof) at least 80 percent of their gross income from V.I. sources and at least 50 percent [1] of their gross in-

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[1] Under the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, the percentage of a corporation's gross income that must be derived from the active conduct of a trade or business in the Virgin Islands is increased from 50 percent to 65 percent. This increase will be phased in over three years. For taxable years beginning after Dec. 31, 1982, the percentage limitation will be 55 percent, for taxable years beginning after Dec. 31, 1983, the percentage limitation will be 60 percent, and for taxable years beginning after December 31, 1984 and thereafter the percentage limitation will be 65 percent.

That Act did not affect the percentage—80 percent—of gross income that must be derived from Virgin Islands sources.

come from the active conduct of a trade or business within the Virgin Islands. Acting within the constraint of the 80–50 test, the Government of the Virgin Islands has established further criteria for tax reductions, such as a $50,000 minimum investment and certain employment criteria.

Taxation of passive income in the Virgin Islands

U.S. law generally imposes a 30-percent tax on the gross amount of dividends, interest, royalties, and other fixed or determinable annual or periodical income (hereinafter sometimes referred to as passive investment income) paid by U.S. persons to nonresident aliens and foreign corporations when that income is not effectively connected with the conduct of a U.S. trade or business by the foreign person. This 30-percent rate is often reduced, or eliminated, by income tax treaties. U.S. law also generally imposes on the payor of such passive investment income a duty to withhold the tax due (secs. 1441 and 1442).

Under the mirror system, the Virgin Islands imposes a similar 30-percent tax on passive investment income paid by V.I. persons to non-V.I. persons, including U.S. persons. The Virgin Islands cannot now forgive this tax, since the tax is upon the recipient and not upon the V.I. payor. A U.S. recipient of passive income from the Virgin Islands may generally take a foreign tax credit for any such tax (subject to limits) against its U.S. tax liability. Although there is some dispute about the underlying tax liability of the recipient of passive investment income from the Virgin Islands, it is the Internal Revenue Service's position that the recipient is liable for the tax (Rev. Rul. 78–327, 1978–2 C.B. 196).[2]

In addition, there is a dispute about the authority of the Virgin Islands to require withholding of this tax (as opposed to its authority to impose the underlying tax). This dispute has been the subject of litigation. The U.S. Court of Appeals for the Third Circuit held that the Virgin Islands did not have the power to impose withholding.[3] The basis of this decision was a Treasury Regulation that provided that U.S. persons were not required to withhold on payments of passive investment income to V.I. persons: the Third Circuit mirrored that Regulation to hold that V.I. persons did not have to withhold on payments to U.S. persons. The Treasury Department has since revoked the Regulation in question. Therefore, according to the IRS, V.I. persons who pay passive income to U.S. persons must withhold tax at a 30-percent rate. However, some persons have questioned the validity of the IRS revocation of that Regulation. The revocation occurred simultaneously with issuance of a Revenue Procedure that continued the rule that U.S. persons need not withhold on payments of passive investment income to V.I. persons. Therefore, some persons allege that the revocation of the Regulation was invalid and that the Virgin Islands does not have the power to require withholding of the tax. It is understood that these issues are again in controversy.

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[2] No inference should be drawn from this discussion as to the correctness of the view of either party about this dispute or about the dispute as to the related withholding obligation.

[3] *Vitco* v. *Government of the Virgin Islands*, 560 F. 2d 180 (3d Cir. 1977), *cert. denied*, 435 U.S. 180 (1978).

Guamanian taxation of passive income

Like the Virgin Islands, Guam is a possession of the United States and has a tax system generally mirroring the Internal Revenue Code. Until 1972, passive investment income paid by Guamanian persons to U.S. persons was subject to a 30-percent Guamanian tax. As is the case with V.I. taxes today, this tax was creditable (subject to limits) against U.S. tax liability through the foreign tax credit mechanism. In 1972, finding that the effect of the Guamanian passive income tax had been to discourage U.S. investment in Guam, Congress repealed the tax.[4]

Reasons for Change

The current 30-percent tax on the gross amount of passive investment income paid by V.I. persons to U.S. persons discourages investment by U.S. persons in the Virgin Islands. Because no deductions are allowed, the tax on this income, in many cases, is higher than the regular corporate or individual tax would be if deductions were allowed. Although the United States allows a foreign tax credit for taxes paid to the Virgin Islands, such credits generally cannot offset U.S. tax on U.S. source income. Therefore, the 30-percent tax on gross V.I. source passive investment income frequently results in such income being taxed at a higher rate than similar income earned by U.S. persons in the United States. This disincentive has had the effect of retarding investments by U.S. persons in the Virgin Islands. The Committee has limited the effect of the bill to certain U.S. persons, because the Committee does not intend to enable foreign persons to use the Virgin Islands as a conduit to make investments in the United States.

Explanation of Provisions

The bill will generally limit the Virgin Islands tax on certain passive investment-type income from sources within the Virgin Islands that is not effectively connected with the conduct of a trade or business in the Virgin Islands and that is received by U.S. citizens, resident aliens of the United States, and U.S. corporations, to 10 percent of the gross amount received. The bill will continue present law for dividends paid to such persons out of earnings and profits accumulated during taxable years beginning before the effective date (the day after the date of enactment). It will treat post-effective date dividends as first coming out of earnings and profits accumulated during taxable years beginning before the effective date.

The bill will allow the Government of the Virgin Islands, in its discretion, to reduce this 10-percent rate (or to eliminate the tax altogether). The Government of the Virgin Islands will have the discretion to reduce (or eliminate) the tax on the basis of criteria it chooses. The bill will also limit the complementary withholding tax on such income to the 10-percent (or lower) rate.

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[4] Congress' method of repealing the Guamanian tax was to repeal the 30-percent U.S. tax on passive investment income paid by U.S. persons to Guamanian persons. Repeal of the Guamanian tax thus occurred through "mirroring" the repeal of the U.S. tax.

The 10-percent rate of tax is available only to U.S. citizens, resident aliens and corporations. The bill will not affect the tax treatment of payments by V.I. persons to non-U.S. persons, to U.S. trusts, estates, or partnerships, or to V.I. residents.

The bill makes clear the Virgin Islands' right prospectively both to impose the tax and to collect it by requiring withholding. The bill is not intended to affect disputes now pending with respect to prior years between various taxpayers and the V.I. Government as to whether under existing law the Virgin Islands can tax U.S. recipients non-resident in the Virgin Islands on passive income from Virgin Islands sources.

Effective Date

The new Virgin Islands tax rates will generally apply to amounts received after the date of enactment. However, the withholding obligation will apply to payments made after the date of enactment.

Revenue Effect

It is estimated that this provision will have a negligible revenue impact.

B. Provisions Relating to Social Security Disability Insurance (DI)

1. Continuation of DI benefits to certain individuals pursuing appeal (sec. 2 of the bill and sec. 223 of the Social Security Act)

Present Law

A social security disability insurance (DI) beneficiary who is found by the State agency to be no longer eligible for benefits continues to receive benefits for two months after the month in which he ceases to be disabled. (As an administrative practice, individuals are now generally found to be "not disabled" no earlier than month in which the agency makes the termination decision.) The individual may request a reconsideration of the decision and, if the denial is upheld, he may appeal the decision to an Administrative Law Judge (ALJ). The individual is not presently eligible for benefits during the appeals process. However, if the ALJ reverses the initial termination decision, benefits are paid retroactively.

Reason for Change

In the early stages of the continuing disability investigations (CDI) review process, while reviews have been focused on cases most likely to be found ineligible, States have been terminating benefits in approximately 45 percent of the cases reviewed. Of those cases which appeal, approximately 65 percent have benefits reinstated by an administrative law judge. This wide variation between the decisions made by State agencies and ALJs, a long recognized problem, stems from a number of factors. For example, the beneficiary can introduce new medical evidence at the ALJ hearing; the ALJ hearing is the first face-to-face contact between the reviewed beneficiary and a decision-maker; and the standards of disability used by State agencies and ALJs differ in some important aspects.

The committee believes that the lack of uniformity of decisions between State agencies and ALJs is a fundamental problem in the disability determination and appeals process which must be dealt with administratively and must be carefully considered when the Committee takes up substantive legislation. In the meantime, the Committee believes that some emergency relief is warranted for workers who are having benefits terminated by State agencies and then—in more than half the cases appealed—having their benefits reinstated by an ALJ.

The committee does not intend that its decision to extend benefits during the appeals process should be considered a judgment that it disagrees with the standards being applied by the State agency. It is clearly the responsibility of the administering agency to make the

policy determinations which implement a statute. The Social Security Disability Amendments of 1980 properly mandated a vigorous effort to eliminate ineligible individuals from the benefit rolls. This legislation does not in any way represent a reversal of that mandate but rather is a temporary expedient to help deal with some of the problems incident to the implementation of that mandate.

The committee expects that every effort will be made to collect overpayments from beneficiaries in cases where the final decision is to terminate benefits. While there is provision to waive overpayments in cases where recovery is clearly inappropriate, the Committee expects such waivers to be granted only when fully justified and after all alternatives for repayment—including repayment over a period of time—have been explored.

Explanation of Provision

The committee amendment will continue DI benefits and medicare coverage (at the individual's option) through the month preceding the month of the hearing decision for terminated beneficiaries pursuing an appeal. These additional DI payments would be subject to recovery as overpayments, subject to the same waiver provisions now in current law, if the initial termination decision were upheld.

Effective Date

This provision will be effective for termination decisions occurring between the date of enactment and July 1, 1983, but in no case would payments be made for months after June 1983. Cases now pending an ALJ decision would also be covered by this provision, although lump sum back payments would not be authorized. Individuals terminated before the date of enactment who have not appealed the decision would qualify for continued benefits only if they are still within the allowable period for requesting a review.

2. Secretarial authority to control flow of continuing disability investigation reviews (sec. 3 of the bill and sec. 221(i) of the Social Security Act)

Present Law

As mandated by the Social Security Disability Amendments of 1980, all DI beneficiaries except those with permanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility. Beneficiaries with permanent impairments may be reviewed less frequently. The provision in present law specifies a minimum level of review.

Reason for Change

The committee believes that the requirement of the 1980 amendments mandating a periodic review of the continuing eligibility of disability beneficiaries is essential for ensuring that benefits go only to those who are disabled within the meaning of the law. The Committee also believes that every effort should be made by the Secretary, in co-

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operation with the States, to ensure that these reviews are carefully considered and processed in a timely fashion.

The committee recognizes that some States may have experienced unavoidable difficulties in implementing the periodic review procedures. For this reason, the Committee amendment authorizes the Secretary to take into account the capabilities and workloads of the State agencies in assigning cases to the States for review. To some extent, actions already implemented administratively may have relieved the situation in some States, but this amendment will make clear the Secretary's authority to provide such relief even if this means that the statutory schedule of reviewing one-third of the caseload each year cannot *initially* be met. The Committee emphasizes, however, that it continues to view the integrity of the disability rolls as a matter of high national priority which must be achieved in all States by the prompt implementation of a thorough program of periodic review.

The committee notes that the full cost of State agency administration is borne by the social security trust funds. It is expected that the Secretary will request and make available to the States adequate resources to achieve full compliance with the 1980 amendments as rapidly as possible. In particular, the Committee insists that this authority shall be used only where the State is unable to carry out the full workload despite a good faith effort to achieve the necessary staffing and otherwise take advantage of the resources made available. The Committee also expects the Administration to undertake all necessary actions to assure that the program of periodic review is properly and evenhandedly implemented on a nationwide basis.

Explanation of Provision

The committee amendment provides the Secretary of Health and Human Services the authority to slow—on a State-by-State basis—the flow of cases sent to State agencies for review of continuing eligibility. The Secretary is instructed to take into consideration State workload and staffing requirements, and is authorized to slow reviews only in States that demonstrate a good faith effort to meet staffing requirements and process claims in a timely fashion.

Effective Date

This provision will be effective on enactment.

3. Medical evidence requirement (sec. 4 of the bill and sec. 221 of the Social Security Act)

Present Law

Although current law does not specify a time period for the collection of medical evidence, current procedures, detailed in the guidelines used by State agencies, require the Secretary to seek to obtain all medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

The adoption of this procedure was announced by the Administration in May 1982. Previously, any requirements as to the length of the period over which medical evidence should be sought were left up to the States. For some individuals, medical evidence was gathered over more than a 12-month period. For others, medical evidence was gathered over a shorter period.

Reason for Change

The committee regards as a high priority the careful development and consistency of decisions to terminate or continue disability benefits. This provision is intended to contribute to both of these objectives. It is not the committee's intention that this provision require the Secretary to pay for medical evidence which is not useful for an evaluation of the individual's impairment.

Explanation of Provision

The committee amendment puts into law the requirement that the Secretary must attempt to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

Effective Date

This provision will be effective on enactment.

4. Report to Congress (sec. 5 of the bill and sec. 221(i) of the Social Security Act)

Present Law

There is no requirement for periodic reporting to the Congress by the Secretary of Health and Human Services with respect to continuing disability investigations.

Explanation of Provision

The committee amendment requires the Secretary to report to the Senate Finance Committee and the House Ways and Means Committee semiannually on the number of: Continuing eligibility reviews, termination decisions, reconsideration requests, and termination decisions which are overturned at the reconsideration or hearing level.

Effective Date

This provision will be effective on enactment.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget Effects

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of H.R. 7093, as reported.

Budget receipts

The committee estimates that the tax provision relating to the Virgin Islands will have a negligible revenue effect.

The Treasury Department agrees with this statement.

Buget outlays

According to the Congressional Budget Office, the provisions relating to social security disability insurance would result in an increase in Federal outlays of $60 million in fiscal year 1983 and would reduce Federal outlays by $20 million in fiscal year 1984, due exclusively to the temporary payment of benefits through the appeals process. Any outlay effects in fiscal years 1985 through 1987 would be negligible.

Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 7093, as amended, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of H.R. 7093, as reported.

Provisions relating to rate of taxes paid to Virgin Islands

Numbers of individuals and businesses who would be regulated.—The bill does not involve new or expanded regulation of individuals or businesses.

Economic impact of regulation on individuals, consumers and businesses.—The bill does not involve economic regulation.

Impact on personal privacy.—This bill does not relate to the personal privacy of individual taxpayers.

Determination of the amount of paperwork.—The bill will involve some paperwork requirements for the Virgin Islands and affected taxpayers in determining withholding changes under the bill.

Provisions relating to social security disability insurance

The disability insurance amendments will make additional benefits available to certain individuals. While there may be some additional forms which must be filed as a consequence of this change, the economic circumstances of affected individuals will clearly be improved. The bill will not impact on personal privacy.

Other Matters

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates and agrees with the methodology used and the resulting estimates (as indicated in Part III of this report). The Director submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 30, 1982.

Hon. ROBERT DOLE,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 403 of the Budget Act, the Congressional Budget Office has examined H.R. 7093, as ordered reported by the Committee on Finance on September 28, 1982. The bill reduces the 30 percent tax on non-Virgin Island passive investment (dividends, royalties, interest) to 10 percent. However, the bill will continue the current 30 percent rate for dividends paid to individuals out of earnings and profits accumulated during taxable years beginning before the effective date of the bill.

This bill does not provide any new or increased tax expenditures. The Congressional Budget Office also estimates that the bill will have a negligible effect on budget receipts.

A Disability Insurance provision would permit payments to cases appealing a termination decision through an administrative law judge hearing. The provision would permit payments through July 1983. This would add an estimated $60 million to federal outlays in fiscal year 1983 and would reduce federal outlays by $20 million in 1984. Any outlay effects in fiscal years 1985 through 1987 and the budget authority effects in all years would be negligible.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

New Budget Authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the bill has a negligible effect on budget authority in all years.

Tax Expenditures

In compliance wih section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee states that the bill involves no new or increased tax expenditures.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the provisions of H.R. 7093, as reported by the committee).

VI. ADDITIONAL VIEWS OF SENATOR LONG ON H.R. 7093

The social security disability program was enacted in 1956. At the time it was passed, Congress believed it was adopting a narrowly drawn program which would serve only the most severely disabled. The actuaries projected that its cost would be modest and that it could be financed over its entire future history by a tax rate of less than one-half of one precent. Over the years, these early cost estimates have proven much too low. The number of people drawing benefits has grown far beyond anything that was anticipated in 1956. The long-range cost of the program is now projected to be some three an one-half times as great as was expected in 1956. By 1980, it was clear to Congress that this was a program out of control.

In 1980, the Congress enacted legislation designed to bring the social security disability insurance program back under control. A major element of the 1980 amendments was a requirement that the Administration begin a thoroughgoing periodic review of the eligibility of all beneficiaries. This review has been undertaken and, as was anticipated, a large portion of the cases reviewed have been found to be ineligible. Yet the Finance Committee in this bill recommends the extraordinary procedure of continuing to pay benefits to individuals who have been found to be ineligible for those benefits until they have exhausted a lengthy administrative appeals process.

I believe that continuing benefits is a fundamentally incorrect approach to this situation. The individuals being terminated from the disability rolls are people who have been found not to meet the requirements for eligibility. The present review process was mandated because of deep Congressional concern that the cost of the disability program had grown out of control. Lax administration was a major reason for the uncontrolled growth of the program. Because of this lax administration, many people were put on the benefit rolls who did not meet the stringent requirements that Congress established for this program.

The social security disability program from its very inception was intended as insurance against the virtually total loss of earnings ability arising from severe disabilities. Time and again Congress has reaffirmed the intent to limit benefits under this program only to those people who cannot work. Unfortunately, the program has not always been administered in a way which carries out this mandate. As a result, individuals have been put on the benefit rolls even though their disabilities are not so severe that they are no longer capable of substantial work activity. Some of these individuals are in fact handicapped, but they are not so disabled as to meet the standards of the social security disability program.

The Committee proposal will result in significant expenditures of social security trust fund monies. These expenditures will go to pay benefits primarily to people who do not qualify for those benefits. While the legislation provides for recovering these incorrect payments at a later date, most of those payments will not in fact be recovered.

The Administration believes that they will be able to get back about half of the incorrect payments, and that may be a highly optimistic estimate. The payment of benefits during appeal will tend to aggravate the existing serious problems which exist within the social security appeals system. Moreover, there is a danger that this legislation will be viewed as undermining the mandate of the 1980 Amendments for vigorous administration to assure that benefits are paid only to eligible individuals.

The Nature of the Social Security Disability Program

When the social security disability program was enacted in 1956, it was intended to be a program for those individuals who are so disabled that they cannot engage in any kind of substantial work activity. There are many people who suffer handicapping ailments, and these individuals are deserving of great sympathy. However, the social security disability program was not intended as a pension to be paid to anyone with a handicap. If the social security trust funds are to be used to pay benefits to all those who have suffered a medical condition which restricts their earnings capacity, the Congress will need to enact very substantial increases in the social security tax rate to fund the program.

This is not to say that Congress should not address the problems of handicapped individuals. A great deal can be done through a variety of programs to assist these individuals to regain the ability to work and to encourage the expansion of employment opportunities. Consideration needs to be given to improving those programs and to strengthening the incentives in the tax laws for hiring the handicapped. But the social security disability insurance program is based on a different premise and addresses a different population. The social security program is insurance against that catastrophic situation in which a worker becomes so disabled that he has totally lost the ability to support himself.

The limited intent of Congress with respect to this program can be seen by looking back at its legislative history. In 1957, when the program was newly enacted, the actuaries projected that, its costs would represent less than one-half percent of taxable payroll. By 1980, that cost was projected at 1.5 percent of payroll—more than 3½ times as much.

Despite the intent of Congress that this should be a program narrowly limited to people who have totally lost the ability to earn a living, there has been a continual tendency to put on the rolls individuals who are less severely disabled. In part this may arise from a misunderstanding of the purposes of the program. In part it may arise from the unwillingness to expend the funds necessary to administer the program tightly.

The Congress has reaffirmed its original intent to restrict this program to the most severely disabled individuals when it has reviewed the program. In 1967, for example, it appeared that courts were applying a rule which would give benefits to any individual with a disability sufficiently severe to keep him from doing his usual work or any other work available in his locality.

DI FINANCIAL FORECASTS IN EARLIER TRUSTEES' REPORTS

[Intermediate Assumptions]

Year of earlier trustees' report	Long-range cost [in percent of taxable payroll]	Cost estimates for CY 1980 [dollars in billions]
1957	0.42	$1.0
1960	0.35	1.5
1965	0.63	2.0
1967	0.85	3.2
1972	1.18	NS
1977	3.68	17.4
1980	1.50	[1] 15.9
1982 [1]	1.50	[2] 15.9

[1] Actual for 1980.
[2] Estimate.
NS—Not shown in report.
Source: Congressional Research Service, July 1982.

DISABILITY INSURANCE PROGRAM COSTS, 1957–82

[In millions]

Calendar year	Total costs
1957	$59
1958	261
1959	485
1960	600
1961	956
1962	1,183
1963	1,297
1964	1,407
1965	1,687
1966	1,947
1967	2,089
1968	2,458
1969	2,716
1970	3,259
1971	4,000
1972	4,759
1973	5,973
1974	7,196
1975	8,790
1976	10,366
1977	11,946
1978	12,954
1979	14,186
1980	15,872
1981	[1] 17,658
1982	[1] 18,508

[1] Estimated based on the Alternative II-B assumptions contained in the 1982 OASDI Trustees' Report.
Source: Social Security Bulletin, Annual Statistical Supplement, 1980.

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DI BENEFICIARIES, YEAR-BY-YEAR, 1957–82

Calendar year	Disabled workers	Total DI beneficiaries [1]
1957	149,850	149,850
1958	237,719	268,057
1959	334,443	460,354
1960	455,371	687,451
1961	618,075	1,027,089
1962	740,867	1,275,105
1963	827,014	1,452,472
1964	894,173	1,563,366
1965	988,074	1,739,051
1966	1,097,190	1,970,322
1967	1,193,120	2,140,214
1968	1,295,300	2,335,134
1969	1,394,291	2,487,548
1970	1,492,948	2,664,995
1971	1,647,684	2,930,008
1972	1,832,916	3,271,486
1973	2,016,626	3,558,982
1974	2,236,882	3,911,334
1975	2,488,774	4,352,200
1976	2,670,208	4,623,757
1977	2,837,432	4,860,431
1978	2,879,774	4,868,490
1979	2,870,590	4,777,412
1980	2,861,253	4,682,172
1981	2,776,519	4,456,274
1982 est.[2]	2,723,000	4,374,000

[1] Includes spouses and children of disabled workers.

[2] 1982 OASDI Trustees' Report, Intermediate II–B assumptions.

Source: Social Security Bulletin, annual statistical supplement, 1980.

The Congress felt this was a far broader definition of disability than was appropriate for the social security disability insurance program. To reemphasize the original intent, Congress amended the law to make it clear that an individual "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy

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exists for him, or whether he would be hired if he applied for work" (sec. 223(d) of the Social Security Act).

Despite the clear Congressional intent that the social security disability insurance program be limited to the most severely disabled, the program continued to experience growth beyond anything that could be explained by changes in the legislation or demographic trends. The annual costs of the program increased from a little more than $250 million in 1958 to over a billion dollars in 1962, to more than $3 billion by 1970, more than $10 billion by 1976 and more than $18 billion in 1982.

According to an analysis done in 1978 by former Chief Actuary Robert Myers, the incidence of persons receiving disability benefits increased from 4.5 per one thousand insured workers in 1968 to 6.0 per one thousand in 1972, and to 6.9 per one thousand in 1975—in effect a 50 percent increase over a seven-year period in the rate at which workers were coming onto the disability rolls. There is no evidence to indicate that this increase was in any way based on real increased incidence of disabling conditions among the population at large.

A June, 1977 study by the actuaries of the Social Security Administration cited a variety of factors as responsible for the growth in the benefit rolls. Possible explanations included the increased attractiveness of benefits under a system in which benefit levels had been substantially increased, changing attitudes on the part of individuals with impairments, and increased emphasis on vocational factors resulting in more allowances on appeal. The actuaries also cited the results of trying to hold down administrative costs during a period of increased caseloads and the tendency in such circumstances to give claimants the benefit of the doubt. This problem was described by the actuaries as follows:

> All of this put tremendous pressure on the disability adjudicators to move claims quickly. As a result the administration reduced their review procedures to a small sample, limited the continuing disability investigations on cases which were judged less likely to be terminated, and adopted certain expedients in the development and documentation in the claims process. Although all of these moves may have been necessary in order to avoid an unduly large backlog of disability claims, it is our opinion that they had an unfortunate effect on the cost of the program.
>
> By claiming that it is difficult to maintain a proper balance between sympathy for the claimant and respect for the trust funds, we do not mean that disability adjudicators consciously circumvent the law in order to benefit an unfortunate claimant. What is meant is that in a public program designed specifically to help the people, such as Social Security, whose operations are an open concern to millions of individuals, and where any one decision has an insignificant effect on the overall cost of the program, there is a natural tendency to find in favor of the claimant in close decisions. This tendency is likely to result in a small amount of growth in disability incidence rates each year, such as that experienced under the DI program prior to 1970, but it can become highly significant during long periods of difficult national economic conditions." (SSA Actuarial Study No. 74, January 1977, p. 8.)

COMPARISON OF CONTINUING DISABILITY INVESTIGATIONS (CDI'S) PROCESSED TO TOTAL DISABLED-WORKER BENEFICIARIES OVER THE YEARS

Fiscal year	CDI's processed (DI and concurrent cases only)	DI-worker beneficiaries (in millions)	Number of CDI's per 1,000 DI-worker beneficiaries
1970	[1] 167,000	1.493	111.8
1973	[1] 142,000	2.017	70.4
1974	[1] 120,000	2.237	53.6
1975	[1] 116,000	2.489	46.6
1976	[1] 129,000	2.670	48.3
1977	107,220	2.834	37.8
1978	83,651	2.880	29.0
1979	94,084	2.870	32.8
1980	94,550	2.861	33.0
1981	168,922	[2] 2.835	59.6
Oct. 1, 1981 to June 28, 1982	243,765	[2] 2.723	89.5

[1] Figures provided by SSA in 1977, but not currently verifiable.
[2] Estimates based on intermediate II-B assumptions in the 1982 Trustees' Report.

Source: SSA and Social Security Bulletin, Annual Statistical Supplement, 1980.

The 1980 Amendments

In view of the enormous growth in disability insurance program costs and caseloads, the Congress enacted legislation in 1980 designed to bring the program back under control. The 1980 legislation established limitations on benefit amounts designed to deal with the problem of a program in which benefit levels were unreasonably high in relation to earnings levels. Congress was, however, also concerned with the evidence of loose administration, and mandated several changes designed specifically to tighten up the disability determination process. In order to assure that improper awards to new claimants were avoided, Congress required the Social Security Administration to reinstate its former practice of reviewing most State agency allowances before payments are started. To deal with the problem of improper allowances on appeal, the 1980 Amendments required the Secretary to begin reviewing cases which are allowed in the appeals process. Under this provision, the Social Security Appeals Council is required to reexamine a significant sample of cases decided by administrative law judges and to reverse those cases which have been improperly decided.

The 1980 legislation also required that the Administration report the progress in implementing this review program and provide an analysis of the reasons why administrative law judges so frequently overturn initial agency decisions.

Finally, Congress in the 1980 law specifically required that all disability beneficiaries be reexamined on a periodic basis. This require-

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ment was designed to assure that those who were not eligible for benefits would not continue on the rolls indefinitely once they began receiving benefits. In general, the Administration was required to review each claimant's eligibility at least once every three years; a less frequent review is permitted in cases which are determined to be permanent.

Individuals Being Terminated Are Ineligible

The Congress required a periodic review in the 1980 amendments because of indications that many ineligible people were, in fact, receiving benefits. The rapid growth of the disability caseloads over the preceding 10 years was one indication of this. The substantially reduced level of administrative review during that same period also led to concern that ineligible persons were receiving benefits. Subsequent to the enactment of the 1980 amendments, these concerns were verified in studies conducted both by the Social Security Administration and the General Accounting Office. In March 1981, the GAO issued a report entitled "More Diligent Follow-up Needed To Weed Out Ineligible Social Security Administration Disability Beneficiaries." Based on the evidence then available, this report concluded that "there could be about 584,000 persons on the DI rolls who may not meet the program's eligibility criteria." The annual benefit drain for cash benefits alone (not including medicare) was estimated to be as high as $2 billion. On the basis of its findings, the GAO report recommended that the Department give high priority to implementing a more vigorous continuing disability review program.

On the basis of the legislative mandate in the 1980 amendments and the findings of its own internal studies and those of GAO, the Social Security Administration did undertake a vigorous program of reviewing the eligibility of disabled beneficiaries. During the first eight months of fiscal year 1982, a total of 267,000 reviews were completed. Forty-seven percent of these cases (121,000) were found to be ineligible. Although this is a very high rate of ineligibility, it is consistent with the evidence found in earlier studies. In conducting these reviews, the Administration has utilized techniques designed to target the first reviews on those parts of the caseload where ineligibility was more likely to be found. During the Finance Committee consideration of this bill, an Administration spokesman stated that the overall ineligibility rate is expected to be about 25 percent by the time the process is fully implemented.

While these continuing disability reviews are conducted by State agencies, the Social Security Administration monitors the accuracy of their decisions by conducting a sample reexamination of State agency findings. For the period from October 1981 through March 1982 (the latest available findings) these quality control samples show a 97.5 percent net accuracy rating. In other words, after reexamination of all of the sampled cases (including obtaining additional evidence where this seemed appropriate), the Social Security Administration would have disagreed with the finding of the State agency in only 2½ percent of the cases. This means that by the standards of disability which are applied by the agency, nearly all the cases being terminated are, in fact, ineligible for benefits.

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CONTINUING DISABILITY INVESTIGATION (CDI) CONTINUANCES AND CESSATIONS BY STATE AGENCIES, DI AND SSI COMBINED, FISCAL YEARS 1977–82[1]

Fiscal year	Total number of CDI reviews	Continuances	Cessations	Continuance rate (in percent)	Cessation rate (in percent)
1977	150,305	92,529	57,776	62	38
1978	118,819	64,097	54,722	54	46
1979	134,462	72,353	62,109	54	46
1980	129,084	69,505	59,579	54	46
1981	208,934	110,134	98,800	53	47
10/1/81–5/28/82	266,725	145,321	121,404	54	47

[1] Reflect continuance and cessation rates only at the State agency level—not at the district office or at the hearing or appeal levels of adjudication. These figures differ from the previous table in that they exclude CDI's where no new medical determination of disability by the State agency was required. Other factors have affected the individual's entitlement, such as his return to work.

Source: SSA, July 1982.

REQUESTS FOR ALJ HEARINGS—RECEIVED, PROCESSED, AND PENDING TOTAL CASES

Fiscal years	Requests received	Processed	Pending (end of year)
1979	226,200	210,775	90,212
1980	252,000	232,590	109,636
1981	281,700	262,609	128,164
1982	[2] 326,300	300,000	[2] 155,064

[1] Includes DI, OASI, SSI, and Black Lung cases.
Source: Estimate provided by SSA, OHA, July 1982.

ADMINISTRATIVE LAW JUDGE REVERSAL RATES—DISABILITY INSURANCE INITIAL DENIALS AND TERMINATIONS, FISCAL YEARS 1979–82

Fiscal year	Percent of cases reversed	
	Initial denials	Terminations
1979	56.4	59.5
1980	59.4	63.8
1981	59.0	61.5
1st quarter 1982	57.3	65.4

Source: SSA, July 1982

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Problems in the Appeals Process

If an individual's benefits are terminated because he is found no longer to be disabled, he is entitled to seek a further review of the issue. The first review takes place as a matter of reconsideration by a different decisionmaker in the State agency. Most reconsideration decisions uphold the initial finding of ineligibility. The claimant then is entitled to ask for a hearing before an administrative law judge. At the present time, the administrative law judges are reversing a very high proportion of cases appealed to them. During the first quarter of 1982, 65 percent of terminations which were appealed to administrative law judges were being restored to benefit status. While this is a very high reversal rate, it is not strikingly different from the administrative law judge reversal rate in prior years, nor from the administrative law judge reversal rate of initial claims.

The high reversal rates at the hearings level have been a matter of concern to the Congress for a number of years. On its face, a system in which most appealed cases are reversed is a system in trouble. Simply as a workload matter, such a situation leads to an unduly large number of appeals. The committee proposal to pay benefits during appeal will aggravate this problem. Moreover, a high reversal rate tends to cast doubt on the validity of the entire decisionmaking process and to invite efforts to game the system.

The 1980 amendments included a requirement that the Social Security Administration conduct a study of the factors involved in the large numbers of ALJ reversals. This study found that markedly different eligibility standards were being applied in the appeals process from the standards used by the agency. In a sample of administrative law judge decisions, the Social Security Office of Assessment using agency standards would have allowed 13 percent of the sample—while the administrative law judges had allowed 64 percent of the sample. This study indicates that a very significant part of the administrative law judge pattern of high reversals occurs because the appeals process simply does not follow the same eligibility standards as the agency.

There will always be some reversals which can be attributed to differences of judgment in close cases, evidence obtainable only through personal appearance, and changes in condition between initial decision and hearing. But reversals for these reasons represent only a small part of the caseload. Most reversals are due to the application of easier eligibility standards.

There can be no justification for continuing a system in which different standards of eligibility are applied at the appeals level than are applied at the initial determination level. Such a situation invites universal appeals, denies those who do not appeal of a fair opportunity to receive benefits, and creates a revolving door situation in which one part of the agency puts an individual on the rolls after another part of the same agency has taken him off the rolls. It is the responsibility of the administering agency, in this case the Social Security Administration, to develop the procedures and guidelines which will carry out the requirements of a law. Policy decisions should be made by the agency and should be carried out by all parts of the agency including those charged with conducting hearings. It is not the function of an

Table 1. Percent Distribution of Sample Case Allowances and Denials, by Decision-maker and Basis for Decision 1/

	Original ALJ Decision	Appeals Council Decision	Office of Assessment Decision Using DDS Standards
ALLOWANCES			
Total	64%	48%	13%
Medical alone	18	15	6
Medical/Vocational inability to engage in SGA:			
Directed by medical-vocational rule	14	11	5
Specific reasons:			
RFC less than sedentary	18	9	0
Pain combined with significant impairment(s)	5	3	0
Mental disorders combined with significant physical impairment(s)	5	4	(2/)
Other medical/vocational	5	6	2
DENIALS			
Total	36	52	87
Impairment not severe	11	16	39
Impairment does not prohibit past work	9	13	28
Directed by medical-vocational rule	13	19	13
Impairment does not prohibit other work	1	2	4
Other	2	3	3

NOTE: Detail may not add to totals due to rounding.

1/ Percentages shown are for the combined total of DI and SSI claims. Although there are some differences between the allowance/denial rates for DI claims and SSI claims (e.g., the Appeals Council would have allowed about 49% of DI claims and 45% of SSI claims), these differences do not appear to be significant and do not affect the findings of the review.

2/ About 0.4%.

Source: SSA January 1982 Study

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administrative law judge to make agency policy. It is his function to assure claimants that the agency policy is being carried out in their case. This responsibility of the administrative law judge was described in a 1977 study of the Social Security appeals process by the Center for Administrative Justice. The final report of that study describes the proper roll of the administrative law judge as follows:

> The protection of ALJ decisional independence in the APA is significant. Once appointed the ALJ's position is permanent; he may be removed only "for cause" after formal adjudicatory hearing. Moreover, the ALJ's compensation is determined by the Civil Service Commission, not by his agency. Cases must be assigned in rotation, the ALJ may not be assigned tasks inconsistent with his duties as an ALJ and, with respect to the *facts* at issue in a particular case, the ALJ may not be approached by anyone, including the employing agency, save on the record. Moreover, the ALJ may not be made subject to the supervision or control of any person who has investigative or prosecuting functions for the agency.
>
> On the other hand, certain aspects of the ALJ's activities are clearly subject to agency control. ALJ's are not "policy" independent. They represent an extension of "the agency" and the agency may control their exercise of discretion by regulation, guidelines, instructions, opinions and the like in order to attempt to produce decisions as similar as possible to those "the agency" would have made. There is no prohibition even on consultation with agency employees on questions of law or policy in a particular case.

(Sources: *Final Report: Study of the Social Security Administration Hearing System.* Center for Administrative Justice, October 1977, p. 244–5.)

It appears that the Social Security Administration in the past has not carried out its responsibility to assure that administrative law judges do in fact implement agency policy as to how and under what standards the question of disability is to be determined.

This situation should be greatly improved in the near future. The Social Security Administration has undertaken to publish in Social Security Rulings (which are binding on administrative law judges) a much more detailed explanation of the criteria to be applied in determining whether or not an individual is eligible for disability benefits. The greater part of these rulings will have been published by the end of October of this year and this project is expected to be essentially completed with the publication of the January, 1983 Social Security Rulings. The Administration is to be commended for undertaking to correct this problem and should continue to monitor the situation and to publish further guidelines as necessary.

To assure that the administrative law judges are in fact carrying out the agency policy as published in these rulings, the Social Security Appeals Council has the ongoing responsibility of reviewing cases allowed by administrative law judges. This responsibility was reaffirmed in the 1980 legislation and the Administration should give a high priority to implement that responsibility. If the agency suc-

ceeds in conforming the policy applied in the appeals process to the authoritative agency policy standards, the rate of reversals on review should fall dramatically. This in itself should tend to reduce the appeals workload to more manageable levels, since claimants will no longer be encouraged to appeal in all cases (as they are by the present system). Once these changes are fully implemented, it can be expected that reversals at the hearing level will tend to occur only where there is in fact a failue to apply the agency standards at the initial and reconsideration levels, or where the claimant's condition has in fact worsened since the initial agency determination.

Initial Problems Are Being Corrected

The present Administration is to be commended for moving rapidly and effectively to implement the review requirements mandated by the Congress. It is unfortunately inevitable that there will be some difficulties encountered in undertaking any major new initiative. In the case of the disability review process, this situation was aggravated by the very large number of cases involved (267,000 during the first eight months of fiscal 1982) and by the complications of operating under contractual arrangements with a network of State agencies.

Sadly, there were some cases of improper terminations and even some cases of terminations involving individuals with such severe disabilities as to leave no room for doubt. It is remarkable that such situations were rare and that the Administration has been able to maintain a 97.5 percent accuracy rate. Still, every effort should be made to avoid burdening those individuals who are without any question eligible, and the Administration has in fact been sensitive to this need.

Since the implementation of this program, the Administration has made numerous changes in its procedures directed specifically at assuring that truly eligible individuals are continued in benefit status and, insofar as appropriate, are spared the burden of unnecessary reviews.

A letter to the Committee on Finance from the Commissioner of Social Security outlines the following twelve different steps the agency has taken to improve its procedures in ways which help assure a high degree of accuracy:

Excerpt From September 16, 1982, Letter From Commissioner of Social Security

1. In March, SSA initiated a policy of determining that, in general, a person's disability ceases as of the time the beneficiary is notified of the cessation. This change reduces situations where the beneficiary is faced with the need to pay back past benefits because of a retroactive determination.

2. Since May, SSA has mandated that States review *all* medical evidence available for the past year—a directive which ensures that every State is looking at every piece of evidence that might be pertinent to a case.

3. SSA has underway, in two States, a study to test the value of obtaining more than one special mental status examination in cases where evidence from the beneficiary's

treating source is incomplete or inadequate. This is intended to determine whether a person's mental condition can drastically change from one day to another. One criticism of SSA's practice of getting only one mental status examination is that it gives a misleading "snapshot" of a person.

4. Since March, SSA has required State agencies to furnish detailed explanations of their decisions in all cases in which a person's disability has ceased.

5. To insure quality in CDI cases, SSA conducts a quality review of a sample of cases before benefits are stopped. In June 1982, SSA doubled the number of quality reviews of termination cases. The quality has been holding very high at 97.5 percent. In addition, to demonstrate the importance of quality in the CDI process, SSA established an interim accuracy goal for the State agencies will cut waiting for publication of regulations.

6. SSA has consistently monitored State agency resources and workloads closely and adjusts the flow of cases to the individual States to avoid backlogs when problems have arisen in their acquiring adequate resources. The selective moratoriums on new CDI cases that SSA has implemented for August and September (and even earlier in some States) has been easing problems in specific States that have had unusually large backlogs.

7. Starting in October, SSA will use a new procedure for beginning a CDI review: each beneficiary will have a face-to-face interview with an interviewer in the local Social Security office. The interviewer will explain how the review works and what the beneficiary's rights are, obtain information about the beneficiary's medical care and treatment and current condition, and—in some cases—conclude the review process where it is clearly warranted based on the beneficiary's current medical condition.

This will correct the single most glaring anomaly in the CDI process. Recipients whose cases are selected for review under the 1980 Congressional mandate rarely, if ever, come face-to-face with a decisionmaker until and unless the case is pursued to the third level of review and appeal—a process which may drag on as much as 6 months to a year after benefits have been stopped. This one flaw in the program is perhaps more to blame than any other factor for the seemingly senseless "horror stories" we have all seen from time to time of people being dropped from the rolls despite glaringly obvious disabilities.

8. To improve the quality of determinations in difficult cases where it is necessary to determine a person's capacity to do work-related activities despite a severe impairment, SSA is requiring that the determinations as to remaining capacity be more detailed and explicit so that the basis for the final decision is clear.

9. SSA has taken many actions to improve the quality of consultative examinations purchased by the Government in

cases where medical evidence from a person's physician is unavailable or incomplete.

10. SSA has been very sensitive to the need for special handling of cases involving psychiatric impairments. SSA has met with mental health groups to obtain their recommendations for improvements and is reevaluating all guidelines for evaluation of mental impairments. SSA has also encouraged the States to increase the number of psychiatrists on their staffs in order to enhance their ability to review cases involving mental impairments. Secretary Schweiker has asked the American Psychiatric Association for assistance in recruiting psychiatrists for the States.

11. SSA has added more than 140 Administrative Law Judges to what is already perhaps the largest single adjudicative system in the world, bringing their total number to more than 800 and providing them with significantly more support staff to help reduce the backlog of cases that has been a chronic problem in past years.

12. Based on our findings in the first year of the CDI program, SSA has broadened the definition of the permanently disabled who need not be subject to the every-three-year CDI process mandated under the law. As a result, SSA expects to exempt an additional 165,000 beneficiaries from the CDI process during the next fiscal year—which will mean reducing the total from about 800,000 to about 640,000, a major reduction in workloads for the State agencies.

Included in these measures is an important change under which a personal interview is conducted by a Social Security Administration employee before a case is even sent to a State agency for review. This personal interview assures that claimants will be acquainted with the implications of the process and will have the opportunity to present their views and to make available any relevant evidence. Moreover, the face-to-face interview creates a situation in which obviously inappropriate reviews can be detected at the very beginning of the process. In such situations, the case is not even sent to the State agency but is referred back to the Social Security central office with a recommendation that further review be discontinued.

These actions should reduce to an absolute minimum the incidence of improper terminations. Together with the administrative steps being taken to improve the appeals process, these changes eliminate any possible basis for continuing benefit payments beyond the point of the initial State agency determination.

Finance Committee Approach Inadvisable

The Committee has recommended an approach which would continue benefits during the appeals process. This approach has nothing to recommend it. If the bulk of initial decisions denying benefits were incorrect, the proper approach would be to change the initial decision process rather than to pay benefits to those who happen to appeal that initial decision. In fact, however, the evidence available to the Committee does not indicate that the bulk of initial decisions are wrong.

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Rather, it indicates that over 97 percent of the decisions are correct. Consequently, the Committee bill will result in spending social security trust fund money primarily to pay improper benefits. Some of this money will be subsequently recovered; most of it will not. Except in those cases where the individual's benefit is continued on appeal (and this will frequently be an improper continuation) the amendment does nothing but postpone the day of reckoning. Moreover, it will leave the terminated beneficiary with the burden of a substantial overpayment at that point.

The implications of the Committee amendment may be even more than the short-term improper expenditure of many millions of dollars in social security trust funds. The history of the social security disability program seems to show a fair degree of volatility in the application of adjudicative standards. The Congress has faced a continuing need to reemphasize its original intent that the definition of disability be applied strictly and narrowly. In the 1980 Amendments Congress spoke forcefully and, thus far, effectively to this issue. There is a distinct danger that these amendments would be viewed by all adjudicators as a reversal of this Congressional intent. This bill could be seen as a Congressional judgment that most, or a substantial proportion, of the agency's terminations are incorrect. If this occurs, it could cause the State agencies to allow more claims.

In addition, the Committee provision is bound to have substantial impact on the appeals process, probably in ways which will undermine the attempts of the Administration to bring the appellate process back into line with the agency policy. Simply on a workload basis, the decision to pay benefits through the hearing level will stimulate additional appeals from individuals with little expectation of ultimately winning reinstatement. In addition, the hearings officers like the State agencies may read into this legislation a subtle message that Congress is reversing its earlier concern over the integrity of the benefit rolls.

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